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EXAMINER	
EBERSMAN, BRUCE I	
ART UNIT	PAPER NUMBER
3691	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/754,700	GELSON ET AL.	
	Examiner	Art Unit	
	BRUCE I. EBERSMAN	3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-14,17,18,20-28,30 and 31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-14,17,18,20-28,30 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/18/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-7, 9-14,17,18,20-28, 30,31 presented for examination. Applicant submitted an amendment on 6/18/08 amending claims 1,10,11,17-24,30,31. Claims 8,15, 16, and 29 have been canceled. After careful consideration of the applicant's arguments and amendments, the examiner finds new grounds of rejection in view of amendment to the claims. As such, this action is a Final rejection of the claims.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter.

Claim 31 is a structure for facilitating a like kind exchange. A structure does not fit in one of the statutory categories, and is thus non-statutory. Appropriate correction is required.

Claim Rejections – 35 USC § 101: Legal Methods Not Patent-Eligible

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-31 are not eligible for patenting under section 101 because they claim a legal method, not within the useful arts, and because they depend for their operability on positive law, rather than laws of nature.

Here, the invention is a method of reducing tax liability under the U.S. tax laws by operation of IRC 1031 and 1033. The invention thus only operates in the context of a legal system containing IRC 1031 and 1033 or (perhaps) provisions analogous thereto, and in any event depends for its utility on the existence of a particular legal framework. Given that the invention operates completely outside the "laws of nature," it is appropriate to question whether the invention concerns patent-eligible subject matter at all. *Cf. In re Comiskey*, No. 2006-1286 (Fed. Cir. Sept. 20, 2007), Slip Op. at 10 (finding the invention in that case to be in a "field of endeavor that both the framers and Congress intended to be beyond the reach of patentable subject matter").

Section 101 Utility Requirement

An assumption underlying the discussion of "useful arts" in the sources cited above is that innovations in the useful arts depend on the laws of nature, not the laws of man. Accordingly, an invention that merely recites an innovation in tax compliance strategy under the current version of the Internal Revenue Code cannot be patentable-eligible subject matter under 35 U.S.C. § 101, as informed by the Constitutional purpose of promoting progress in the "useful arts."

The fact that applicant's invention depends for its operability on state of the positive law provided by the Internal Revenue Code provides a strong basis for rejecting it under section 101. Under section 101, a claimed invention can only be patented if it is "useful." As the Federal Circuit has explained, "[t]he utility requirement of § 101

mandates that the invention be operable to achieve useful results." *In re Swartz*, 232 F.3d 862, 863 (Fed. Cir. 2000). With respect to applicant's claims here, the question of whether the claimed method could achieve useful results would depend on whether the resultant claim would be issued by the USPTO and then found infringed in a court having jurisdiction over a patent infringement dispute involving the patent.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30,31 Rejected under 35 USC 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.

The term limited contribution obligation does not have a standard definition. If is unclear what this means other than the specification which states that a bank or trust provides this obligation. (0030). The examiner is assuming this is a form of a loan.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-4,6,9,10,11,12,14,18,19,20,21,25-28,30,31 rejected under 35 USC 102B over Beyond 1031, Journal of accountancy, by Ronald and Brigette Raitz July 2000, pp 1-10. (Beyond 1031) further in view of "CFLA Leasing Glossary 2001"

As per claim 1, "Beyond Section 1031" discloses;

establishing an accommodating entity to facilitate the like-kind exchange, (p.5, para. 2, qualified intermediary)

the accommodating entity being funded by a third party; (p.7, exhibit #3, 3rd party lender, application says bank or trust provides funding 0030)

receiving a request from the exchanger that identifies the replacement property to utilize in the like-kind exchange; (p. 5, para. 1, replacement property identified to 3rd party intermediary)

establishing a property owning entity to acquire an ownership interest in the replacement property, (p.6, para. 4)

the property owning entity being capitalized through a contribution by the accommodating entity of a

promissory note in an amount appropriate for the like- kind exchange; (p. 6, example, para. 4, funds are directed from exchanger to the intermediary (accommodating entity) to the property owning entity)

and exchanging a relinquished property of the exchanger with the replacement(p. 6, para. 7, note p.7 para. Exhibit 3 discloses a 3rd party lender during the construction and acquisition phase) property. (See also, p. 5 para. 4 where lenders may lend money to the parking entity under various conditions)

causing ownership in the replacement property to vest in the property owning entity to insulate the accommodating entity from liability, the property owning entity acquiring a real estate interest in the replacement property; (p.4, exhibit 2, bullet 1, parking entity, and p. 6, para. 4, the examiner notes that LLC's or corporations perform a function of liability isolation, in addition to other roles, The reference teaches the actions)

covering a portion of project cost for acquisition and development of the replacement property through construction financing to the property owning entity; (p.7, exhibit 3, bullet 3, financing for construction)

providing a loan from the exchanger to the property owning entity, the loan amount equal to the difference between the project cost and the amount of construction financing; (p.6 para.4, the exchanger is loaning money to the property co.)

leasing the project from the property owning entity to the exchanger (with a purchase option addressed by CFLA leasing Glossary, the lease requiring the exchanger to pay rent to the property owning entity; (p.7, exhibit 3, bullet, replacement property is often leased or managed by exchanger, leases often include purchase options.)

Beyond 1031 does not explicitly disclose;

specifically disavowing an agency relationship between the accommodating entity and the exchanger and

the property owning entity and the exchanger; and

exchanging a the relinquished property of the exchanger with the replacement property upon exercise o f the purchase option. (purchase option reference 103

Park your reverse exchange teaches;

specifically disavowing an agency relationship between the accommodating entity and the exchanger and

the property owning entity and the exchanger; and

(Park Your Reverse Exchange, p. 5, last paragraph)

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the exchange disclosure of Beyond 1031 with the “arms length” relationship teachings of "Park your Reverse Exchange" for the motivation of conforming with IRS code and RR’s associated with 1031. The examiner notes that the best way to specifically avow an agency relationship would be to create an arms length Agreement.

Beyond 1031 and Park Your Reverse Exchange do not explicitly disclose;

(leasing the project from the property owning entity to the exchanger) “with a purchase option”

exchanging a the relinquished property of the exchanger with the replacement property upon exercise o f the purchase option. (purchase option reference 103

(leasing) with a purchase option

exchanging a the relinquished property of the exchanger with the replacement property upon exercise o f the purchase option. (purchase option reference already made, Beyond 1031, exhibit #3, further exchange is discussed by both references).

CFLA Leasing Glossary 2001 teaches purchase options to be common elements of a lease. (p.8). One of ordinary skill in the art at the time of the invention would both have associated a purchase option with a lease, especially in this instance where the improvements and project are all for the benefit of the exchanger. Thus, the exchanger would want to purchase the improved property at a fixed price at the lease end in order to insure that the improver did not somehow decide to make a larger profit or take other actions. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to include a fixed price purchase option with a lease.
It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the exchange disclosure of Beyond 1031 with the lease teachings of CFLA for the motivation of allowing the future property owner to control the end transfer price.

As per claim 2, “Beyond Section 1031” discloses an exchanger which is a corporate entity. (p. 7, para. 4, company Shop Fast)

As per claim 3, "Beyond Section 1031" discloses an LLC entity which is an exchanger. (p. 10, para. 3, Pinnacle Care LLC)

As per claim 4, "Beyond Section 1031" discloses an exchanger which is an individual. (p. 8, para. 1)

As per claim 6 "Beyond Section 1031" discloses a property owing entity being an LLC set up by a qualified intermediary. (p. 6, para. 4)

As per claim 9, "Beyond Section 1031" discloses making improvements to the replacement property to increase it's value. (p. 6, para. 7)

As per claim 10, "Beyond Section 1031" discloses wherein the amount of the funding from the 3rd party limited contribution obligation is related to the cost of the initial acquisition of the replacement property and the cost of the improvements. (p. 7, exhibit 3, bullet 3, and further para. 4)

As per claim 11, "Beyond Section 1031" discloses funding (p.7, exhibit 3, bullet 3, and further paragraph 4), ie a loan from a bank. "Beyond Section 1031" does not specifically disclose the percent of the acquisition cost being 5%. However, it would be obvious to one of ordinary skill in the art to denominate acquisition cost contributions (loan) in a variety of percentages depending on the amount of funding that the property co. could

obtain on it's own with smaller percentages desirable for the purpose of limiting liability to the exchange company.

As per claim 12, "Beyond Section 1031" discloses a property owning entity acquiring an ownership in the replacement property. (p.6, para. 4). A fee simple interest means that property owner is the sole owner, and is the most common form of ownership.

As per claim 14, "Beyond Section 1031" discloses that exchanger supervises construction but, the intermediary disburses all funds, . (p. 5, bullet 2, 3) Further, the Qualified intermediary can set up a separate entity which owns and manages the property. (p. 6, para 4)

As per claim 18, "Beyond Section 1031" discloses that the exchanger can lend funds through the qualified intermediary to a property co. (p. 6, para. 4) for acquisition and that construction exchanges can be used to fund construction. (p. 6, para. 5) "Beyond Section 1031" does not specifically disclose loan from the exchanger percentages of approximately 30% of the anticipated cost of construction and development of the replacement property. However, one of ordinary skill in the art of real-estate finance and exchange would recognize that the exchanger might be a potential source of first tier funding to a property co as, a construction exchange might not have enough property equity to allow for funding of the project using traditional loans against solely the property. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify the exchanger loaning funds to the property co. for the

purpose of acquisition or financing to incorporate a percentage of 30% which would allow for either construction funding or to provide equity suitable to allow the property co. to obtain said funding.

As per claims 20, “Beyond Section 1031” discloses loans from the exchanger (p. 6, para 4). However, "Beyond Section 1031" does not specifically disclose a loan from the exchanger. However it would have been obvious to one of ordinary skill in the art at the time of the invention that the concept of loaning and mortgages are synonymous with multiple loans and mortgages as, construction projects take time and often run over requiring further loans or funding.

AS per claim 21, "Beyond Section 1031” discloses a second loan in the form of a construction loan. (p.7, para. 4). However, “Beyond Section 1031” does not specifically disclose a 4th party. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to conclude that a construction loan could be obtained from another party (4th) given that multiple banks and entities are often involved in complex tax related transactions.

As per claim 24, "Beyond Section 1031" discloses a 2nd loan but, does not specifically disclose that the amount paid by the accommodating entity will reduce principal of the accommodating entity under the promissory note used to capitalize the property owning entity. However, one of ordinary skill in the art at time of the invention would recognize

that loans and mortgages of various types are used in construction type 1031 exchanges and that further reduction in principle through loan payment is well known.

As per claim 25, Beyond Section 1031 discloses
the property owning entity leasing the replacement property (p4. exhibit 2, bullet 2) to pay a debt service on the replacement property.(p.7 exhibit 3, bullet 2, interest payments)
Beyond Section 1031 does not specifically disclose arms-length leasing terms and a purchase option. "Park your Reverse Exchange" teaches warehousing replacement property using an Arms-length transaction. (p.5, last paragraph)

Therefore It would therefore have been obvious to one of ordinary skill in the art at the ftime of the invention to combine the leasing disclosures of Beyond 1031 with the arms-length dealings teachings of "Park Your Exchange" for the purpose of convincing the IRS that the business deal had real burdens and benefits for the participants. (p5, last para.)

"Beyond 1031" and "Parking Your Exchange" do not specifically detail a purchase option combined with the lease. However, CFLA p. 8 teaches a fixed purchase option term for a lease for the purpose of allowing the lessee the right to purchase at a pre-agreed price at the end of the leasing time period. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing and

arms-length disclosures of "Beyond 1031" and "Parking Your Exchange" with the teachings of CFLA that purchase options are well known term associated with any operating or purchase option leasing

As per claim 26, "section 1031" discloses the property owning entity leasing the property (p4. exhibit 2, bullet 2) to pay debt service (p.7, exhibit 3, bullet 2). "Beyond 1031 " does not specifically disclose operating costs, and profits equal to the amount at risk amount of the property owning entity but teaches the need to maintain an arms length relationship and further the need to show real benefits and burdens. CFLA p. 8 teaches a Full Payout lease where the lease payments compensate the lessor for all costs including a reasonable rate of return.

One of ordinary skill in the art at the time of the invention would recognize that structuring an arms length transaction with real benefits and burdens would include showing reasonable profits proportional to the capital at risk. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the property owning entity leasing disclosures and fair dealings requirements of "Beyond 1031" to create an "arms length lease" which compensated the leasing party proportional to capital at risk.

As per claims 27, and 28, "Beyond 1031" discloses the concept of leasing (p. 7 exhibit 3), however, lease terminology such as "purchase option" (claim 27) and "put rights", ie

option to sell (claim 28) are not specifically disclosed. CAFLA teaches put options (p.17, top left margin) and Purchase options (p. 17) as standard leasing transaction terminologies. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the disclosed concept of leasing with standardized leasing terminology teachings of CAFLA for the motivation of controlling the end disposition of the property. (see page 3).

As per claims 30,31, "Beyond Section 1031" discloses;

establishing an accommodating entity to facilitate the like-kind exchange, (p.5, para. 2, qualified intermediary)

the accommodating entity being funded by a third party; (p.7, exhibit #3, 3rd party lender, application says bank or trust provides funding 0030) receiving a request from the exchanger that identifies a replacement property to utilize in the like-kind exchange; (p. 5, para. 1, replacement property identified to 3rd party intermediary) establishing a property owning entity to acquire an ownership interest in the replacement property, (p.6, para. 4)

the property owning entity being capitalized through a contribution by the accommodating entity of a promissory note in an amount appropriate for the like- kind exchange; (p. 6, example, para. 4, funds are directed from exchanger to the intermediary (accommodating entity) to the property owning entity)

exchanging a relinquished property of the exchanger with the replacement(p. 6, para. 7) property.

The property owning entity leasing the replacement property (p4. exhibit 2, bullet 2) to pay a debt service on the replacement property.(p.7 exhibit 3, bullet 2, interest payments)

Beyond Section 1031 does not specifically disclose arms-length leasing terms and a purchase option. "Park your Reverse Exchange" teaches warehousing replacement property using an Arms-length transaction. (p.5, last paragraph) specifically disavowing an agency relationship between the accommodating entity and the exchanger and the property owning entity and the exchanger. The examiner notes that one of ordinary skill in the art would recognize that an arms length exchange is one way of demonstrating a contractual versus an agency relationship and the reference explains that the importance of demonstrating that the relationship is non-agency.

Therefore It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing disclosures of Beyond 1031 with the arms-length dealings teachings of "Park Your Exchange" for the purpose of convincing the IRS that the business deal had real burdens and benefits for the participants. (p5, last para.)

"Beyond 1031" and "Parking Your Exchange" do not specifically detail a purchase option combined with the lease. However, CFLA p. 8 teaches a fixed purchase option term for a lease for the purpose of allowing the lessee the right to purchase at a pre-agreed price at the end of the leasing time period. It would therefore have been obvious

to one of ordinary skill in the art at the time of the invention to combine the leasing and arms-length disclosures of "Beyond 1031" and "Parking Your Exchange" with the teachings of CFLA that purchase options are terms commonly associated with leasing Exchanging a relished property of the exchanger with the replacement property upon exercise of the purchase option. (see beyond 1031, exhibit #3)

6. Claims 5, 13, 22, 23 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" in view of Park Your Reverse Exchange, and further in view of "CFLA Leasing Glossary" and further in view of IRS Revenue Ruling 200251008 (plr-106793-02), "RR"

As per claim 5, "Beyond Section 1031" discloses a 3rd party lender (p.7, exhibit 3, bullet 3), but, does not specifically use the words "bank or trust company", (nor does "Park Your Reverse Exchange" or CFLA Leasing Glossary"
RR (p. 6, para. 1) teaches bank construction loans. It would therefore have been obvious to one of ordinary sill in the art at the time of the applicants invention to combine 3rd party loan disclosure of "Beyond Section 1031" with the bank teachings of RR for the purpose of obtaining a bank construction loan from a known supplier of funds for a 1031 exchange. (p.6, para. 1 describes one such exchange using a bank loan)

As per claim 13, "Beyond Section 1031", "Park Your Reverse Exchange" and "CFLA leasing Glossary" do not explicitly disclose ground leases in the replacement property.

RR p. 6 last paragraph teaches a ground lease of 30 or more years being acceptable for to a 1031 exchanges. It would therefore have been obvious to one of ordinary skill in the art at the time of the applicants invention to combine the exchange transaction disclosures of 1031 exchange with the teachings of RR that a ground lease of 30 or more years would be acceptable to the IRS as an element of a like-kind exchange for the purpose of creating a like kind exchange construction exchange transaction. (p.6, last paragraph).

As per claim 22, “Beyond Section 1031" discloses multiple types of loans but, Beyond 1031, Park Your Reverse Exchange and CFLA leasing Glossary do not explicilty disclose recourse loans. "RR" (p. 4, para. 1 teaches recourse loans (mortgage) which are guaranteed by the taxpayer as part of a 1031 transaction. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the loan disclosures of "Beyond 1031” with the recourse mortgage teachings of "RR" for the purpose of creating a transaction where at least part of the second loan is recourse by agreement and for the protection of the granting bank. (p. 4, para. 1)

As per claim 23, “Beyond Section 1031 teaches construction loans . But Beyond 1031, Park Your Reverse Exchange and CFLA Leasing Glossary do not explicitly disclose recourse or percentages of recourse. RR teaches full recourse mortgages (p. 4, para.1) but does not teach percentages.. However, it would be obvious to one of ordinary skill in the art at the time of the invention to utilize a recourse mortgage (ie claim 22) with

various percentages depending on the relative level of protection required by the bank. (p. 4, para. 1).

7. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over “Beyond Section 1031”, and further in view of “Park Your Reverse Exchange, further in view of “CFLA Leasing Exchange” and further in view of ComNet Realty, Summary, "ComNet".

As per claim 17, "Beyond 1031" does not disclose "non-recourse" loans. ComNet teaches non-recourse loans for the 1031 compliant exchange funding methods (heading) . It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the non-recourse funding teachings of “ComNet” with the disclosure of "Beyond 1031” for the purpose of creating a “conservative” (last paragraph) investment.

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8. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over “Beyond Section 1031” , further in view of “Park Your Reverse Exchange” further in view of “CFLA Leasing Glossary” and further in view of “Overview of the Financial Sector”, 2002 (“Overview”)

As per claim 7, “Beyond Section 1031" discloses an Accommodating Entity discloses an accommodating entity (p. 5, para. 2) but does not specifically disclose a nominee trust being used as an accommodating entity. " Overview (page 1, para. 4 teaches a

nominee trusts for the purpose of holding assets in the name other than the client's name. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine section 1031's disclosure of accommodating entity's with the nominee trusts of "Overview)for the purpose of holding assets in a name other than that of the clients thereby preserving privacy.

Response to Arguments

Claims 1-7, 9-14,17,18,20-28, 30,31 presented for examination. Applicant submitted an amendment on 6/18/08 amending claims 1,10,11,17-24,30,31. Claims 8,15, 16, and 29 have been canceled. After careful consideration of the applicant's arguments and amendments, the examiner finds new grounds of rejection in view of amendment to the claims.

Claim Objections

9. Applicant's correction of claim numbering for claim 31 and a small typo in claim 30 are accepted and this objection is now withdrawn.

Claim Rejections - 35 USC § 101

The examiner's rejections under 35 USC 101 are still maintained because;

1. The structure of claim 31 is not a statutory class.

2. The invention as now claimed is reliant on the internal revenue code for its necessity, See above arguments.

3. The applicant is claiming the process of documenting and accomplishing an exchange. The method needs to be linked to computerization or automation as opposed to the act of exchange itself.

Claim Rejections - 35 USC § 112

10. Applicants removal of the term limited contribution obligation from claims 1,10,11, is appreciated along with the definition provided. However the applicant has not removed limited contribution obligation from claims 30, and 31 obviating the continuation of the rejection.

The applicant attorney argues that a "limited obligation contribution may be construct such as a limited obligation bond." Limited obligation bonds have definitions in the encyclopedia.

However, the examiner believes that the claimed limited contribution obligation does not have support in the specification and the definition offered is for is for a limited

contribution bond. While the applicant's intent is understood, the claims in view of the specification need to more clearly bear this out.

Claim Rejections - 35 USC § 102 and 103

Applicants arguments are moot in view of new overall grounds of rejection as a result of amendment to the independent claims 1,30,31. It is noted that claims 30,31 now contain portions of dependent claims 29 and 30 (claim 31). However, claim 29 for example does not depend from claims 30 or 31 and thus "rolling it up" creates an amendment of claims 30,31.

The applicant's main argument with respect to claim 1 is related to establishing a property owning entity to acquire an ownership interest in the replacement property capitalized through a contribution by the accommodating entity of a promissory note in an amount appropriate for a like kind exchange.

The examiner notes that the term "accommodating entity" of the application is not defined though the examiner interprets this to be the qualified intermediary which is commonly the party who would facilitate an exchange transaction. The Property co is disclosed on page 6, para. 4, " a QI sets up a separate entity (usually a llc or corporation" to warehouse the property.

The concept of promissory note in the amount appropriate for appropriate for a like kind exchange funded by the accommodating entity (QI in my reference), is likewise, anticipated by the example of p.6 para. 4. Karen and Paul lend money to the QI which applicant calls accommodator which then through the separate entity utilizes the funds to purchase the new property. The QI would in effect lend the money to the separate entity which would then purchase the building. (otherwise, it would not be separate). Further the examiner notes that in Park Your Reverse exchange, p. 5, para. 4, the bank can in some cases loan money to a parking entity for purchase transactions.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRUCE I. EBERSMAN whose telephone number is (571)270-3442. The examiner can normally be reached on 630am-5pm, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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